IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17680 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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BIPINBHAI BHIKHABHAI MARU

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 17680 of 2003

MR SP MAJMUDAR for Petitioner No. 1

Ms Mita Panchal, AGP for Respondent No. 2-3

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CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 28/04/2004

ORAL JUDGEMENT

The petitioner above named has preferred this petition under Article 226 of the Constitution of India for appropriate writ, order or direction, for quashing and setting aside an order of detention dated 19/11/03

passed by respondent no.2 herein, in exercise of the powers u/s.3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short, "the said Act").

2. It was alleged against the petitioner that two offences were registered against him before Rander Police Station at C.R.No.224/2003 and 476/2003 on 13.8.2003 and 30.9.2003 for an offences punishable u/s. 326, 114, 323, 506 of IPC read with section 135 of the Bombay Police Act.

3. It was also alleged against the petitioner that two witnesses had given statements against the petitioner saying that he was engaged in bootlegging activities. On the strength of the aforesaid one registered offence and two statements of unnamed witnesses, the detaining authority found that the petitioner is required to be detained, with a view to prevent him from indulging in bootlegging activities which amounted to a threat to public order and accordingly, the order of detention was passed against the petitioner. The petitioner has challenged the order of detention on various grounds. It has been contended that simply because a couple of offences of IPC has been registered against the petitioner, it cannot be said that his alleged activities would lead to a threat to public order. It has been contended that the petitioner's representation has not been considered promptly. It has further been contended that names of the witnesses were not disclosed to the petitioner, and therefore, there was a violation of the principle of natural justice. That, therefore, the order of detention is illegal and hence, it may be quashed and set aside.

5. On receipt of the petition, Rule was issued and in response to the service of notice of Rule, Ms.Mita Panchal, learned AGP has appeared on behalf of the respondents. The learned AGP produces affidavit, which is taken on record. I have heard the learned advocates for the parties and have perused the papers.

6. At the final hearing, learned Advocate for the Advocate has contended that two IPC offence as shown above has been registered. It is not much in dispute that the petitioner was detained in exercise of the powers u/s.3(2) of the said Act.

7. On going through the nature of the offence

registered against the petitioner, it can be said that these are stray individual offences and such activities on the part of the petitioner may cause a threat to law and order situation but it would be difficult for us to accept that these activities of the petitioner would lead to a threat to public order. So far as the representation is concerned, copy of the representation is placed at Annexure 'B', page 20. Learned Advocate for the petitioner has made a statement at the bar that the petitioner has not received any communication from the detaining authority, Government or PASA board as to what happened to his representation. Learned AGP has argued that the representation was forwarded by the detaining authority to the State Government. However, there is nothing on record to show that the State Government has considered and decided the representation of the petitioner. We do not find on record affidavit of the detaining authority or of the Sate Government. In absence of any material on record, it can be said that there is no material on record to show that the representation of the petitioner was dealt with and decided within reasonable time by the concerned authorities. Article 22 (5) of the Constitution of India provides for right of the detenu to submit effective representation against his detention. The right to submit effective representation is coupled with a right of getting decision within a reasonable time. These are the two sides of the same coin. Therefore, if one of the two is violated then it can be said that the petitioner is deprived of the aforesaid constitutional remedy. In the present case, we find that there is a denial to the aforesaid constitutional remedy and the further continuance of the detenu cannot be sustained in the eye of law. Therefore, the petitioner has to be released on this count. This can be done by quashing and setting aside the order. In that view of the matter, the petition is required to be allowed. The order is required to be quashed and set aside.

8. For the foregoing reasons, this petition is is allowed. The impugned order dated 19.11.2003 passed by respondent No.2 is ordered to be quashed and set aside. The detenu is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute to the aforesaid extent. No order as to costs. D.S. permitted.

[D P Buch, J.]

msp